

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES H. CARNER III,)	Case No. C07-1645-JCC-JPD
)	
Petitioner,)	
)	
v.)	ORDER DISMISSING CERTAIN
)	CLAIMS, AND DIRECTING
KING COUNTY SUPERIOR COURT, et al.,)	SERVICE AND ANSWER ON
)	REMAINING RESPONDENT
Respondents.)	
_____)	

Petitioner James H. Carner III, a state inmate, is proceeding *pro se* and *in forma pauperis* in his attempt to bring an amended 28 U.S.C. § 2254 petition for writ of habeas corpus. Dkt. No. 12. Petitioner names King County Corrections Officer Eric Leberg, and King County Corrections Superintendent Major Hayes as respondents. *Id* at 2. Petitioner's amended habeas petition alleges double jeopardy, ineffective assistance of counsel, and vindictive prosecution, as well as several civil rights claims which more properly fall under 42 U.S.C. § 1983. *Id* at 2-15. By order dated October 19, 2007, United States Magistrate Judge James P. Donohue declined to serve petitioner's original petition but granted leave to amend certain specified deficiencies. Dkt. No. 5. Petitioner's proposed amended petition alleges that his guilty plea to two counts of violating a no-contact order was the result of ineffective assistance of counsel, resulted in double jeopardy, and that the charge against him was based

ORDER DISMISSING CERTAIN CLAIMS AND
RESPONDENTS, AND DIRECTING SERVICE AND
ANSWER ON REMAINING RESPONDENT

on vindictive prosecution. Dkt. Nos. 1-1, 12.

(1) Dismissal of Deliberate Indifference and Access to Courts Claims. Petitioner has failed to correct deficiencies outlined in this court's October 19, 2007 Order. *See* Dkt. No. 5. Petitioner has once again made civil rights claims that the jail facility failed to administer proper medical assistance and denied his access to the courts. Dkt. No. 12 at 6, 11. These claims properly fall under 42 U.S.C. § 1983. It also appears that petitioner has brought similar claims under a different cause number in this court. *See Carner v. Sanders, et al.*, 07-cv-01646-JLR-MAT. Accordingly, petitioner's deliberate indifference and access to courts claims are DISMISSED without prejudice to his pursuing such claims in the above-cited case. The Clerk of the court is directed to change the caption of this case accordingly.

(2) The Clerk shall arrange for service by certified mail upon Major Hayes and the Attorney General of the State of Washington of copies of petitioner's petition and of this Order, and shall direct a copy of this Order and of the General Order to petitioner.

(3) Response Required. Within **forty-five (45) days** after such service, respondent shall file and serve an answer in accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States District Courts. As part of such answer, respondent shall state whether petitioner has exhausted available state remedies, and whether an evidentiary hearing is necessary. Respondent shall not file a dispositive motion in place of an answer without first showing cause as to why an answer is inadequate. Respondent shall file the answer with the Clerk of the Court and serve a copy of the answer upon petitioner.

(4) The answer will be treated in accordance with Local Rule CR 7. Accordingly, on the face of the answer, **respondent shall note it for consideration on the fourth Friday after filing.** Petitioner may file and serve a response no later than the Monday immediately preceding the Friday designated for consideration of the matter, and respondent may file and serve a reply no later than the Thursday immediately preceding the designated Friday. *See also*

01 *infra* § 4 (concerning filing and service in general).

02 (4) Filing and Service by Parties, Generally. All attorneys admitted to practice
03 before this Court are required to file documents electronically via the Court's CM/ECF system.
04 Counsel are directed to the Court's website, www.wawd.uscourts.gov, for a detailed
05 description of the requirements for filing via CM/ECF. All non-attorneys, such as *pro se*
06 parties and/or prisoners, may continue to file a paper original of any document for the Court's
07 consideration. **A party filing a paper original does not need to file a chambers copy.** All
08 filings, whether filed electronically or in traditional paper format, must indicate in the upper
09 right hand corner the name of the United States Magistrate Judge to whom the document is
10 directed.

11 Additionally, any document filed with the Court must be accompanied by proof that it
12 has been served upon all parties that have entered a notice of appearance in the underlying
13 matter. For electronic filers, the deadline for filing the answer is 11:59 p.m. on **the forty-fifth**
14 **(45) day after service**. If a party files a paper original (i.e. a *pro se* and/or prisoner), the
15 opposition to respondent's answer must be received in the Clerk's office by 4:30 p.m. on the
16 Monday preceding the date of consideration (as noted on the first page of respondent's
17 answer). If a party fails to file and serve timely opposition to a motion, the court may deem
18 any opposition to be without merit.

19 (5) Motions. Any request for court action shall be set forth in a motion, properly
20 filed and served. Pursuant to amended Local Rule CR 7(b), any argument being offered in
21 support of a motion shall be submitted as a part of the motion itself and not in a separate
22 document. **The motion shall include in its caption (immediately below the title of the**
23 **motion) a designation of the date the motion is to be noted for consideration upon the**
24 **court's motion calendar.**


25 Stipulated and agreed motions, motions to file overlength motions or briefs, motions
26

for reconsideration, joint submissions pursuant to the option procedure established in CR37(a)(2)(B), motions for default, requests for the clerk to enter default judgment, and motions for the court to enter default judgment where the opposing party has not appeared shall be noted for consideration on the day they are filed. *See* Local Rule CR 7(d)(1). All other non-dispositive motions shall be noted for consideration no earlier than the third Friday following filing and service of the motion. *See* Local Rule CR 7(d)(3). All dispositive motions shall be noted for consideration no earlier than the fourth Friday following filing and service of the motion. *See also infra* § 4 (concerning filing and service in general).

(6) Direct Communications with District Judge or Magistrate Judge. No direct communication is to take place with the District Judge or Magistrate Judge with regard to this case. All relevant information and papers are to be directed to the Clerk.

(7) The Clerk is directed to send a copy of this Order to the Honorable James P. Donohue.

DATED this 7th day of January, 2008.


John C. Coughenour
United States District Judge

Recommended for entry this
29th day of November, 2007.

s/ JAMES P. DONOHUE
United States Magistrate Judge

ORDER DISMISSING CERTAIN CLAIMS AND
RESPONDENTS, AND DIRECTING SERVICE AND
ANSWER ON REMAINING RESPONDENT

PAGE - 4